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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211530
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J-Lynn Entertainment LLC ("Opposer") respectfully submits its brief in support of its opposition and cancellation of the registration for the mark "Adventures of Shadow," and the "Application" filed by William T Odonnell ("Applicant").

PRELIMINARY STATEMENT

William T Odonnell ("Applicant") is a man who resides in Eureka, CA who sells religious books and miscellaneous merchandise for a small non-profit founded by his father called Creation Research of the North Coast. The Applicant has a pet dog named "Shadow" in which his current registered mark and pending trademark application is named after. This opposition and cancellation proceeding (the "Opposition") became necessary when the Applicant contacted the Opposer threatening lawsuits and trademark opposition against the Opposer's pending Mark "The Adventures of Shadow Cat" Furthermore, this opposition became necessary when the Opposer could not find any current or previous use of the Applicant's Mark in commerce after investigating the Applicant's Mark and having a professional fraud investigator investigate the Applicant's use in commerce for his Mark. After consulting several attorneys and concluding investigations the Opposer came to the conclusion that the Applicant's Mark is subject to cancellation for fraud, non-use, and abandonment. See (Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986)) We came to this conclusion because we could not find any legitimate use or sales of the applicant's mark prior to this proceeding for the classes in which its registered for and for the class of clothing. It is our belief based on the investigation and harassing messages from the applicant. That Mr. Odonnell's only use of this mark prior to these proceedings being filed was intimidation with threats of legal action to other entities and financial gain from possible frivolous litigation.

Since the Applicant has posed trademark opposition and litigation against J-Lynn Entertainment LLC ("Opposer") for its pending mark. A Mark in which the Opposer one day would like to register for the same classes of goods and services as the Applicant. The Opposer is currently using the mark for a Android/iOS based application for a interactive video game/comic book hybrid. The Opposer has also created, offered for sale, and given away promotional shirts baring it's pending Mark before the Applicant filed the application for its mark under the class IC 025 for t-shirts and clothing. It is our belief that the Applicant had no prior use in commerce of his mark for clothing and had no prior intention to use his mark in clothing. It is our belief that the purpose for the Applicant applying for his mark in the class of clothing was to file opposition in case the Opposer added the class of clothing for their pending mark and to strengthen a case for filing a frivolous lawsuit against the Opposer.

STATEMENT OF FACTS

A. Prior History of this Proceeding

On April 30 2008 the Applicant filed an application to register "Adventures of Shadow" for the classes of goods and services IC 009. US 021 023 026 036 038. G & S: Motion picture films, IC 016. US 002 005 022 023 029 037 038 050. G & S: Series of fiction books, and IC 032. US 045 046 048. G & S: Purified bottled drinking water. On November 22 2012 the Applicant filed an application to register "Adventures of Shadow" for IC 025. US 022 039. G & S: Combinations clothing, namely, tee shirts, sweatshirts, jackets, aprons, tank tops, long sleeve t-shirts, sweaters, baseball jerseys, polo shirts, muscle t-shirts, toddler t-shirts, and hooded shirts; headwear. On the first application the Applicant claimed that his first use for the mark was on August 29, 2007. On the second pending application the Applicant claimed the first use June 21, 2007. For both applications the Applicant claimed the first use in commerce was on August 29 2007. After receiving public online and private threats of litigation from the Applicant. The Opposer investigated the Applicant's Mark and discovered evidence non-use, abandonment, and fraud and timely filed a Petition for Cancellation on November 27th 2011. The Opposer filed a Notice of Opposition for the Applicant's mark for the class 025 for T-Shirts and Clothing on July 12th 2013. Both the Cancellation and Opposition proceedings were consolidated on July 23rd 2013.

Two written discovery requests were submitted to the Applicant by the Opposer. The first discovery request the Applicant failed or refused/objected to submit evidence showing current and previous use of his mark in commerce for the classes and goods 009 Films, 016 Books, 032 Bottled Water, 025 Clothing(Opposer's NOR Ex. 5). When this information was not provided. The Opposer submitted a second discovery request, which the Applicant completely failed to supply after the Opposer, gave an extension of time. The Opposer filed a Motion to Compel, supplying TTAB with several email correspondence requesting discovery documents from the Applicant and his counsel. The Board rejected the Opposer's Motion to Compel.

Three trial depositions were taken during this proceeding. One of the Applicant, and two on behalf of the Opposer.

- | | | |
|----|------------------------|---|
| 1. | William T Odonnell Jr. | Applicant, business owner, Odonnell Entertainment (5/26/2015) |
| 2. | Robert L Holmes Jr. | Fraud Investigator, IPCybercrime.com LLC (12/3/2014) |
| 3. | Neadom T Medina | Owner/Founder of J-Lynn Entertainment LLC (6/12/2015) |

B. Applicant's stated first use in commerce

The Applicant's stated first use in commerce was on August 29th 2007 for all of his classes of goods and services registered (009 Films, 016 Books, 032 Bottle Water) and pending (025 Clothing) application for his Mark "Adventures of Shadow".

C. Applicant's emails about the use of his mark

There are a series of emails by the Applicant received during discovery and which were also submitted as exhibits by the Applicant from his deposition on May 26, 2015. In one of the emails dated on August 29, 2007 at 8:80pm the Applicant inquirers about having water bottle labels made so he can sell them. The email shows water bottles with the Applicant's mark have yet to be made, although August 29, 2007 is also the same date that the Applicant claims his first use in commerce was. In this email the Applicant also states that he never thought about using the mark until that past weekend. (Opposer'sNOR Ex. 1)(Applicant Ex. 8, Deposition of William T Odonnell)

D. Applicant's website prior to the proceedings being filed

Prior to this proceeding and prior to the Applicant being notified by the Opposer that his mark was subject for cancellation for non-use, abandonment, and fraud. The Applicant had no items for sale on his websites. His main website stated, "coming soon" with additional text, indicated that any products or services would later be available. (Opposer'sNOR Ex. 7)

E. Investigation results of the Applicant's use of commerce

The Opposer hired a professional fraud investigator from IP Cybercrime named Rob Holmes who has over 19 years experience specializing in counterfeiting, e-commerce, and commerce fraud. During the investigation Mr. Holmes could not find any goods or services for sale using the Applicant's mark. In addition Mr. Holmes spoke to the Applicant inquiring about products and was not offered any goods or services that the Applicant's Mark is registered for. (Opposer'sNOR Ex. 4)(Deposition of Rob Holmes at Pg.6:1-25, Pg.7:1-25)

F. Applicant's failure/inability to prove use in commerce

During this proceeding the Applicant failed/refused to submit materials during discovery that should be easily replicated and easily provided if the Applicant had used his mark in commerce since his stated first use date on August 29, 2007to present day when the request was made. (Opposer's NOR Ex. 5)

G. Applicant's email correspondence

The Applicant sent several emails to various entities threatening legal action without identifying his products sold in commerce and properly identifying how the entities were infringing on his mark for the classes of goods and services in which it's registered for. (Opposer'sNOEx. 6)

ARGUMENT

I.

THE APPLICANT WILLIAM T O'DONNELL COMMITTED FRAUD UPON THE USPTO ON HIS TRADEMARK APPLICATIONS FOR ALL HIS REGISTERED CLASSES OF GOODS AND SERVICES

A. Applicant's Emails Contradict His Stated First Use and First Use in Commerce Declaration

In a series of emails provided during discovery, the Applicant had email correspondence with a local printer (Opposer's NOR Ex. 1) these emails were also submitted by the Applicant as his deposition exhibit (Applicant Ex. 8, Deposition of William T O'Donnell). In the emails the Applicant has yet to even have water bottle labels made, he's inquiring on the price to have them made. Which contradicts the Applicant's stated first use in commerce on August 29 2007. The Applicant even states in the email quote "Until last Sunday eve I never really thought of starting it on water bottles but my guess the Lord had you show up to help you understand creation better and help us out on getting it going." Given the Applicant's obsession over his pet dog named "Shadow" whom the Applicant's mark is named after. The Applicant would have mentioned or shared items being sold in commerce using his Mark to the representative from the local printer. The Applicant's emails from (Opposer's NOR Ex. 1 & NOR Ex. 2) (Opposer's Ex. 1 & Ex. 2, Deposition of Nedom T Medina) clearly demonstrate that the Applicant has given false statements to the USPTO. The Board has ruled on similar cases of fraud and giving false statements to the PTO. See (Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986)); see reference of T.M.E.P § 1402.03 (First International Services Corp. v. Chuckles Inc. 5 USPQ2d 1628 (TTAB 1988)); see (Mister Leonard Inc. v. Jacques Leonard Couture Inc., 23 U.S.P.Q.2d 1064 (T.T.A.B. 1992)). Based on these previous cases the TTAB have ruled on, the Board will find it apparent that the Applicant has given false statements on interstate use in commerce and his claimed first use in commerce.

B. The Applicant's Website Stating Coming Soon Prior to These Proceedings Being Filed And The Applicant's Modifications To His Sites To Hide Non-Use.

During J-Lynn Entertainment's internal investigation and hired investigation by experienced fraud investigator Rob Holmes of IPCybercrime. We took screen captures of Applicant's website. The Applicant's website did not offer, show, or mention items for sale. The website just showed the Applicant's mark with an image of his pet dog, along with information about his dog, and text that says "coming soon" indicating that products and services are not yet available. This is fraud upon the USPTO because the applicant stated on his applications that he had began using his mark in interstate commerce on August 29 2007 (Opposer's NOR Ex. 7, Ex. 4) (Opposer's Ex. 9 & Ex. 5, Deposition of Nedom T Medina). This is another example similar to case the Torres v. Cantine Torresella case. See (Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986))

C. Items Not For Sale Based On The Classes Of Goods And Services The Applicant's Mark Is Registered For.

During the investigations of the Applicant's use of his mark in commerce and during the discovery period, evidence was discovered that shows the Applicant did not have items for sale using his mark. During the investigation of the Applicant's mark by fraud investigator Rob Holmes, Mr. Holmes

could not find any evidence of past or present use of the Applicant's mark in commerce or interstate commerce. Mr. Holmes then proceeded to call the Applicant inquiring about items for sale bearing or using the Applicant's Mark. The Applicant did not offer water bottles, t-shirts/clothing, books, or films. The Applicant even states to Mr. Holmes that films have not been shot yet (Opposer's NOR Ex. 4)(Opposer's Ex. 5, Deposition of Nedom T Medina). See (Torres v. CantineTorresellaS.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986))

II.

IF THE APPLICANT WAS LEGITIMATELY USING HIS MARK AT ALL IN COMMERCE

THE APPLICANT ABANDONED HIS MARK FOR THE CLASS OF WATER BOTTLES

A. Applicant's Failure to Offer Fraud Investigator Water Bottles Using The Applicant's Mark

During the investigation by fraud investigator Rob Holmes, Mr. Holmes called the Applicant inquiring about "Adventures of Shadow" merchandise. The Applicant did not offer any water bottles for sale, and did not mention previous water bottles available. The Applicant stated that the only merchandise on hand was an 8"x10" picture and a mouse pad. Two items that we argue were the Applicant's personal items and not mass-produced items intended for sale as merchandise (Opposer's NOR Ex. 4). Mr. Holmes could not find any present or past sales of water bottles using the Applicant's Mark (Opposer's NOR Ex. 4)(Opposer Ex. 5, Deposition of Nedom T Medina) (Deposition of Rob Holmes at Pg.7:2-4) (Opposer Ex. 13, Deposition of Nedom T Medina at Pg.7:2-4). See (Torres v. CantineTorresellaS.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986))

B. Applicant's Limited Edition Label Indicating A Limited Run of The Product

During the Opposer's internal investigation, we found a picture of a water bottle that appeared to be on applicant's couch which came from the Applicant's personal Facebook page. The water bottle had a label with Applicant's mark that said "Limited Edition 2008." (Opposer's NOR Ex. 3)(Opposer's Ex. 3, Deposition of Nedom T Medina) Although we don't think the Applicant ever sold water bottles in commerce using his mark. We argue that if he did the labeling "Limited Edition 2008" indicates a temporary production thus being abandoned once sold out. Again we iterate that we don't believe water bottles were ever sold in commerce based not finding any evidence of sales and the Applicant's inability to show sales records or receipts from sales of water bottles using his mark (Opposer's NOR Ex. 5)(Opposer's Ex. 6, Deposition of Nedom T Medina). See (Torres v. CantineTorresellaS.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986))

C. Applicant's Failure to Supply A Water Bottle Specimen Bearing The Applicant's Mark

After two discovery requests the Applicant failed to show any sales receipts, sale information, manufacturing orders, or evidence of continuous orders. The first request the Applicant refused/failed to show evidence (Opposer's NOR Ex. 5)(Opposer's Ex. 6, Deposition of Nedom T Medina) and the second request the Applicant completely ignored and we were forced to file a motion to compel. The Opposer argues that if the Applicant had been continuously been selling water bottles using his mark. The evidence of sales and an actual physical bottle should have been easily provided.

III.

THE APPLICANT'S MARK IS SUBJECT TO OPPOSITION AND CANCELLATION FOR NON-USE.

A. Applicant's Email Stating Videos Have Yet To Be Produced.

The Applicant provided emails during discovery, emails that are dated August 30th 2007 and September 1st 2007, which is after the Applicant's stated first use in commerce of August 29th 2007. In the emails the Applicant talks about having to shoot, edit, and raise funds to film and produce videos. A clear indication that the Opposer argues points to fraud and that the Applicant lied on his Application about his first use in commerce under the class of IC009 Films and Motion Pictures. (Opposer's NOR Ex. 2)(Opposer's Ex. 2, Deposition of Neadom T Medina)

B. Applicant's Stating to The Fraud Investigator That Videos For Sale With The Applicant's Mark Are Not Available.

During the investigation performed by Rob Holmes of the Applicant's use in commerce, the Applicant states to Mr. Holmes that videos have not been made. This conversation took place October of 2012. The Opposer argues that this is a clear example of non-use. (Opposer's NOR Ex. 9)(Opposer Ex. 5, Deposition of Neadom T Medina) (Deposition of Rob Holmes at Pg.6:11-25, Pg.7:1-4)

C. The Applicant's failure/refusal to produce documents that he had been selling products using his mark in commerce.

During discovery the Applicant failed/refused to produce any documentation or samples that videos using Applicant's mark were sold in commerce, distributed, produced, or edited. The Opposer argues that documentation like this should have been easily produced and submitted during discovery if indeed the Applicant had legitimately been using his mark continuously in commerce for films and motions pictures to this present day (Opposer's NOR Ex. 5)(Opposer's Ex.6, Deposition of Neadom T Medina).

IV.

THE APPLICANT'S CONTINUES HIS ATTEMPT TO DECIEVE THE USPTO AND TTAB

A. Applicant's submits specimens for deposition exhibits that are purposely degraded in quality and are hard to evaluate the authenticity.

The Opposer would like to call attention to the degraded quality of the exhibits submitted by the Applicant during his deposition on May 26th 2015. It is our belief that the Applicant and his counsel Matthew Swyers have purposely degraded the quality of their exhibits to make it harder for the TTAB to evaluate the authenticity of the exhibits. We make this argument because of the difference in quality of the same or similar pieces of evidence collected during the Opposer's investigation and evidence originally submitted by the Applicant during discovery. (Applicant Ex. 1 through Ex. 17, Deposition of William T Odonnell)

B. Applicant submits a fake shirt specimen as deposition exhibit.

The Opposer would like to bring attention to the Board a shirt specimen that appears to have the Applicant's mark Photoshopped or superimposed on to an image of a T-Shirt (Opposer's NOR Ex. 8 & Ex. 9)(Applicant Ex. 2, Deposition of William T Odonell). The Opposer could not find any previous images, uses, or mention of t-shirts or clothing using the Applicant's mark prior to the filing date of the Applicant applying for his mark in the class and goods of T-shirts and clothing. The Opposer believes that this faked image was used to fraudulently deceive the USPTO in the Applicant's applicant for class 025, but to also deceive the TTAB during this proceeding. Images of a real shirt did not appear until months after this opposition proceeding was filed. The Opposer believes the Applicant had a shirt made so he could post it online to give the appearance that shirts we manufactured and available for sale. Similar cases that the Board has ruled for fraud, namely see (This Little Piggy Wears Cotton v. Piggy Toes, Opposition No. 91159506, 2004 WL 1701272 (T.T.A.B. July 13, 2004)); see (DaimlerChrysler Corp. v. Am. Motors Corp., 94 USPQ2d 1086 (TTAB 2010))

C. Applicant submits exhibits created after Cancellation/Opposition proceedings filed.

The Opposer would like to call out several exhibits submitted by the Applicant during his deposition that were created after the cancellation and opposition proceedings were filed. After the Opposer notified the Applicant that his mark was subject to cancellation for non-use, abandonment, and fraud. (Opposer's NOR 7 & 8) The Applicant began altering his websites and posting social media posts to give the appearance that his mark was being used in commerce. (Applicant Ex. 12, Ex. 13, Ex. 14, Ex. 15, Deposition of William T Odonnell)

D. Applicant's Submits Fake or Modified Proof During Discovery and Deposition

During discovery the Applicant submitted a water bottle label proof that was different than the image of a water bottle with a label saying "Limited Edition 2008" that the Opposer found during it's investigation. The Opposer argues that the proof is not authentic and has no official signatures or dates to validate it was an official proof used for an order. The Opposer believes this proof was created by Applicant after this proceedings were filed which he removed the "Limited Edition 2008" label. (Opposer's NOR Ex. 3)(Applicant's Ex. 9 & Ex. 10, Deposition of William T Odonnell)

V.

APPLICANT HAS NOT LEGITIMATELY USED HIS MARK IN COMMERCE AND ACTIVITIES INDICATED HE IS TRYING TO GAIN BY INTIMIDATION AND FRIVOLOUS LITIGATION

A. Applicant's Threatening Emails to Various Entities.

Emails from the Applicant show examples of the term "trolling" where a person or entity uses intellectually property for financial gain in frivolous, litigation, to intimidate, to manipulate, and/or gain other assets physical or digital. (Opposer's NOR Ex. 6)

B. Applicant's Indication of Frivolous Litigation To Fraud Investigator.

Testifying under oath fraud investigator Rob Holmes of IP Cybercrime was under the impression that the Applicant was trying to gain financially off of frivolous litigation. Deposition of Rob Holmes at Pg.9:6-24)(Opposer's NOR Ex. 9 at Pg.9:6-24)(Opposer Ex.13 at Pg.9:6-24, Deposition of Neadom T Medina)

VI.

OPPOSER'S ASPIRATIONS TO APPLY MARK IN OTHER CLASSES OF GOODS AND SERVICES

A. Intentions and Opportunities for the Opposer to apply its mark under different classes

As other companies and entities do if they have a successful product. They register these products in other categories of goods and services with the USPTO, especially with entertainment based intellectual properties. The Opposer's pending Mark is registered under IC 009. US 021 023 026 036 038. G & S: Computer game software. Like other computer game software intellectual properties such as Super Mario, Angry Birds, Sonic the Hedgehog, and Halo. The Opposer would intend on creating merchandise for it's intellectually properties namely clothing, toys, and accessories. Besides the obvious fraud, non-use, and abandonment of the Applicant's mark, the threat of the Applicant filing Opposition or filing lawsuits for financial gain make from the Opposer is prevalent. It is necessary for the Opposer to file this Opposition/Cancellation proceeding.

CONCLUSION

For all the foregoing reasons presented, the Opposer respectfully requests that the Board sustain its Opposition and Cancellation of the Applicant's pending application and previously registered mark.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Registration No. 3682041

For the mark ADVENTURES OF SHADOW,

J-Lynn Entertainment, LLC,

Petitioner,

vs.

William T. Odonnell,

Registrant.

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:

Cancellation No. 92056491
Opposition No. 91211530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I respectfully submitted a copy on this Notice of Reliance upon the Applicant and his counsel on August 24, 2015, to the Trademark Trial and Appeal Board and to be served, via email, via FedEx, via first class mail and via the TTAB's Electronic System for Trademark Trials and Appeals (ESTTA), postage prepaid, upon:

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